1947 **File No.** S. Bel. 3/47

Legal **DEPARTMENT**

A **BRANCH**

Subject:— Suit: Belgaum.

C.S. no. 144 of 1946.

(1) Mrs. Nekawwa Sankappa Patil
(2) Mr. Shivanagouda Sankappa Patil
(3) Mr. Rudragouda Sankappa Patil
(4) Mrs. Akkawwa Bronaik Patil
(5) Mrs. Chinnawa Malnaik Patil.

Vs.

(1) LAC. Wright H.C. 92458.
(2) The Governor General in Council.

re:

For damages for the death of one Sankappa who was killed by the rash and negligent driving of a motor cycle by an R.A.F. Officer.

P 21/C

File No. S. Bel. 3/47

Std Sectt. Slip 24-B

CONTENTS.

Legal Department File No. S. Bel. 3/47.

Sr. No.	Compilation No.	Subject	Pages.
		Suits Belgaum.	
		C.S.No. 144/1946.	
		Mrs. N. S. Patil and 4 others.	
		v/s plffs.	
		1) L.A.C. Wright H.C. 924587.	
		2) The Governor General in Council.	
		Defts.	
		For damages for the death of one Sankapa who was killed by the negligent driving of a motor cycle by an R.A.F. officer.	
1)		Written Statement	13
2)		Issues	19
3)		Order of the Court dismissing the suit with costs	23

Regular Suit No.144/1946.

In the Court of the Civil Judge,Senior Division,

Belgaum.

1. Mrs.Neelawwa Sankappa Patil,age 40,Caste Lingayat,Occupation Household work,of Achari Galli,Shahapur.
2. Mr. Shivanagouda Sankappa Patil,B.A.,age 21,caste Lingayat,occupation household management, of do.
3. Mr. Rudragouda Sankappa Patil,age 8, caste Ling.,schooling of do. minor by his next friend plff.no.2 as guardian.
4. Mrs.Akkawwa Basnaik Patil,age 19,caste Ling.,occupation household works of Navalgatti,Tal.Bailhongal.
5. Mrs.Chinnawa Malnaik Patil,age 25, caste -do-,occupation-do- of Phularkop, Tal.Bail-Hongal. ... ... Plffs.

Vs.

1. LAC.Wright H.C.924587,age not known, Caste European Christian,of R.A.F.Unit at Sambre-Belgaum.
   Summons to be served through the Commanding Officer,R.A.F.Unit Sambre.
2. The Governor-General in Council,New Delhi. ... ... Defts.

Claim both for purposes of Court fee and Jurisdiction Rs.4900/-.

Herein,the above-named plaintiffs beg to state as ~~follows~~ follows:-

The geneology of the family of the plaintiffs relevant to this suit is as follows:-

SANKAPPA (Deceased = Neelawwa (wife)
PLFF. 1.

Akkawwa	Chinnawwa	Shivangouda	Rudragouda
Plff.4	Plff.5.	pfff. 2	Plff.3.

2. On the 1st of January 1945, Mr.Sankappa Rudragouda Patil (Deceased) of Achari Galli,Shahapur,was proceeding on a pedal cycle on the Belgaum Kaladgi road to his lands at Mavinkatti.He was proceeding on the proper side of the road viz.left hand side of the road.While so proceeding from Belgaum between mile stone No.3/4 and 3/5,a Military Motor Vehicle approached him from the opposite direction and went towards Belgaum on its proper side.No sooner the approaching Military Motor vehicle passed him, deft.No.1 came from behind on Military Motor Cycle No. 280626 at high speed and over-ran the deceased Sankappa causing him serious injuries to his left leg, right shoulder,head etc.

The deceased succumbed to the injuries on 4.1.1945 in the Civil Hospital at Belgaum.The deceased Sankappa was proceeding by the extreme left edge of the road.There wasa wide and oppn road for deft.no.1 to overtake the deceased Sankappa.The deft. no.1 has failed to exercise due care and caution as he was arivin at a high speed.It was entirely the gross negligence on the part of deft.no.1 in colluding with the deceased Sankappa and causing his death.

3. The road lies East-west at the scene of accident and is 34' feet wide there.The main road i.e. the macadamized portion of the road is 12' feet wide with approcimately 11 feet of dust track on either side of it. The point at which the deceased Sankappa was over-run lies in the dust track on the left hand side of the macadamized portion at a distance of 5 feet from the main road. The said point lies 40 feet inside mile stone No.3/5.A rough sketch of the road and the scene of the accident is appended herewith.The same may be treated as part of the plaint.

4. The deft.no.1 in the course of his duties negligently over-ran Sankappa and caused his death.The deceased Sankappa was the only earning member of the family and plffs.1 to 3 entirely depended on him.By hisdeath the plffs.1 to 3 lost the benefit of his protection and care.Thus deft.no.1 caused to the plffs.pecuniary loss resulting from the death of Sankappa Rudragouda Patil.The plffs.lost the benef of the deceased's pecuniary savings,his contribution to the family for maintenance,his contribution towards the education of his children and his contribution towards the marriage expenses of his children etc.and his contribution towards plffs.nos.4 and 5 in the shape of gifts of clothing and ornaments etc.all of which are estimable of money.Hence,plffs.claim compensation as under:-

Plff.no.1	claims	Rs.1500/-	as	compensation.	
" " 2	"	" 1000/-	"	"	
" " 3	"	" 2000/-	"	"	
" " 4	"	" 200/-	"	"	
" " 5	"	" 200Ø=	"	"	

5. The deceased Sankappa was working as a Section-writer in the District court of Belgaum upto the date of accident and consequent death.The conditions of service of the section-writers are that,they

have no obligation to retire from service and can work as long as they are physically fit and the service is non-pensionable.

6. The average monthly earnings of the deceased Sankappa during the six months preceding his death wasRs.57-15-6.

7. The age ofthe deceased Sankappa was about 51 years and six months at the time of his death.He was maintairing excellant health and would have lived upto 70 years.He would have conti-nued to work as Section-writer upto at at least theage of 65 years andhislifenot been cutshort by the negligent act of deft.no.1.

8. Atthe time of the accident i.e. on 1.1.1945,the deft.1 was serving in the R.A.F.Unit at Sambre under the direct control of the Defende Department of the Government of India.While he was thus serving and during the course of hisduties on 1.1.1945 he negligently over-ran and thereby caused the death of Sankappa. Hence,the deft.no.2 is equally liable for the negligent act of the deft.no.1. Thus deft. 2 is added as a party.

9. The claim of the plffs is based on the Fatal Accidents Act XIII of 1855.

10. The cause of action arose on 4.1.1945,the date of death of Sankappa Rudragouda P til,and the accident took place between Mile Stones 3/4 and 3/5 on the Belgaum-Kaladgi Road a point within the jurisdiction of this court;

11. Plff.no.3 being a minor is residing with plff.no.2,who is his elder brother and is represented by plff.no.2 as his next friend for the purposes of this suit.

12. The suit is valued at Rs.4900/- both for purposes of jurisdiction and court fee.

13. The requisite notices under Sec.80 C.P.C.is served on the Central Government and the suit has been filed within one year and two months from the date of the death of Sankapa. The period of two months' notice under Sec.80 C.P.C. on deft.no.2 is exclude in computing the period of limitation.The suit is in time.

14. Plff.pray:-

(1) for a decree for Rs.4900/- against deft.no.1 and deft.no.2 with joint and several liability to pay the same to the plffs.

(2) for future interest on the amount claimed from the date of suit to that of payment.

(3) for costs of this suit.

(4) for any other relief that the court deems proper.

Dated 4th March 1946.

Sd.C.R.Desai.

Pleader for plffs.

==========

Submitted.

The D.G.P. Belgaum has forwarded the plaint and summons in suit No. 144 of 1946 to the Coll and has asked him to obtain sanction to the defence. The D.G.P. has also sent a copy of his letter to this office for info. The suit is against the G.G. in Council and ~~in this case~~ the sanction will have to be given by the Deptt concerned of the Central Govt, i.e. in this case by the Army authorities (vide Rule 184 LoRs). Presumably, the Coll will be aware of this and at least at this stage no action on the part of this office is necessary.

20A/26/7 A.S. Is the ld. S.P. entitled to accept summons in a suit against the S.S. in Council? Rm 26/1

Submitted with ref. to the query by A.S. at p. 6 ante

There is no objection to the D.G.P. accepting summons in suits against G.G. in Council excepting those relating to State-owned Railways (please vide Rule 188 of the L.O.Rs.)

26/7

A.S. Yes, but in such case he should give his proper authority that learned Govt. Counsel see no point in writing to the Collr. in the usual manner. It shows that the D.G.P. does not properly appreciate the limit that the suit is against the learned Govt.

27/7

Resubmitted with ref to the note by A.S. overleaf.

2*. The letter and enclt. on the next page may issue to the D.G.P. and the Collr.

7.9.A
3/7

A.S. R
3/7

Subject:-Suit No.144 of 1946 on the file of the Civil Judge,S.D.Belgaum, filed by Mrs.Neelawwa kom Sankappa Patil and others.

The Remembrancer of Legal Affairs,

Bombay.

No.L.A.W.692 Belgaum, 26 July 1946.

The Plaintiffs Mrs. Neelawwa Sankappa Patil of Shahapur and four others have filed a suit against the Governor General in Council, New Delhi, in the Court of the Civil Judge Senior Division Belgaum. It is seen from the plaint, (para 13) that notice under Section 80 C.P.C. is served on the central Government and the suit has been filed within one year and two months from the date of the death of Sankappa.

Under rule 184(1) of the Law Officers Rules the defence of suits, on behalf of the central Govt. or its officers, cannot be sanctioned by the Provincial Govt. Such sanction must be given by the Department concerned, of the Central Government.

I therefore request you to obtain sanction from the Departments of the Central Govt. concerned for the defence of suit.

A copy of the plaint, received from the District Government Pleader, Belgaum is enclosed herewith.

The District Government Pleader, Belgaum has been requested to move the Court to grant an adjournment till receipt of Govt. orders.

xxxx

Collector of Belgaum.

Through the Commissioner,S.D.Belgaum with respects.

.....

No. L.S.T.-360.
Office of the Commissioner,S.D.,
Belgaum, 30th July 1946.

Submitted with concurrence.

Remembrancer of Legal Affairs.

Commissioner, S.D.

6969
A/9-8146

Submitted

8/m
9/8 AS

Sir Rope

Submitted.

Please see the Collr. of Belgaum's letter overleaf. It has crossed our endt. to him at p. 10 ante. The Collr and the Commr. are requesting RLA to obtain sanction to the defence of the suit from the Central Govt. It is not for this office to move Central Govt. to accord sanction. It is the duty of the office principally concerned in the case. RLA will issue only instructions when report is received. The D.G.P., Belgaum has been directed at p. 9 ante to forward the plaint and summons to the Military authorities Presumably he must have acted on that letter. We may therefore await report from the military authorities

10.

DJ. 9/8

20R
9/8 AS

Submitted. 9

Attention of the D.G.P. Belgaum may be invited to the Govt. of India letter and he may be asked to get in touch with the A.O.C., No. 2 (Indian) Group and help him to prepare and submit to R.A. the required report under Rule 118 read with Rule 184 of the L.O.Rs.

29.3
29/3

'A' may be done. But I think in view of the nature of the case, an elaborate report is not even necessary. The flowers from the Govt. garden for the deceased officer of Sandcastle caused as the rest and reflect drivers of dogs No/. Orderly, care of be caused action of all - Govt.

29/3

I think no further time should be wasted by bringing suit. The suit is simple and similar to Trans suit No. 53 of 1946 in which damages are claimed from Central Surf for death caused by the negligent driving of a military vehicle. We should collect the S.S.I on the first instance & defend the suit on those lines. Sanction for the defence of the suit can be obtained afterwards from the A.O.C. Such routine correspondence can await. I don't think our report is really heavy & can wait. If there are any more facts the A.O.C will let us know.

Please return the papers of the Trans suit. I want to deal on with this. We can take it up

Yours Rafe

11/4/47

11

Belgaum Civil Suit No. 144 of 1946.

This is a suit for damages for the death of one Sankappa who was killed by the rash and negligent driving of a motor cycle by an R.A.F. Officer.. The plaintiffs who are the widow and children of the deceased claim from the Central Government Rs. 4900 as compensation. The plaintiffs have in law no cause of action against the Central Government, the suit can be defended on the principle of immunity of the crown from liability for the torts of its servants.

As the suit is old and the court is not in a mood to grant further adjournments the District Government Pleader may be requested to conduct the defence on the lines of the accompanying memorandum of instructions and written statement.

The defence of the suit is not yet sanctioned by the military authorities. But the defence department letter at p. 31 ante shows that the A.O.C. No. 2 (Indian) Group is authorised to sanction the defence. After issue of the brief to the District Government Pleader the papers will be forwarded to that officer for conveying formal sanction to the defence of the suit.

14/4/47

A.L.R. 14/4

R.L.A.

16.4

In the Court of the Civil Judge, Senior Division, Belgaum.

Regular Suit No.144 of 1946.

1. Mrs.Neelawwa Sankappa Patil, Age 40, Caste Lingayat, Occupation Household work, of Achari Galli, Shahapur.
2. Mr. Shivanagouda Sankappa Patil, B.A., Age 21, Caste Lingayat, Occupation household management of -do-
3. Mr.Rudragouda Sankappa Patil, age 8, Caste Lingayat, schooling of -do- minor by his next friend plff.No.2 as guardian ad litem.
4. Mrs. Akkawwa Basnaik Patil, age 19, Caste Lingayat, Occupation Household works of Navalgatti, Taluka Bail-Hongal.
5. Mrs. Chinnawa Malnaik Patil, Age 25; Caste Lingayat, Occupation household work or Phularkop, Taluka Bail-Hongal.

Plaintiffs.

Versus

1. LAC.Wright H.C.924587, Age not known, Caste European Christian, of R.A.F. Unit at Sambre-Belgaum.
   Summons to be served through the Commanding Officer, R.A.F.Unit Sambre.
2. The Governor-General in Council, New Delhi.

Defendants.

Claim both for purposes of Court Fee and Jurisdiction Rs.4900/-.

Written statement on behalf of the defendant No.2 (Governor General in Council) is as follows:-

1. Assuming without admitting the correctness of the allegations in the plaint regarding the manner of the fatal accident, the plaint discloses no cause of action against this defendant.

2. This defendant is not liable for the alleged rash and negligent action of the defendant No.1 in driving the motor cycle and for the subsequent death of the deceased Sankappa.

3. This defendant is not liable to pay damages to the plaintiffs for the tort if any committed by the defendant No.1

4. The amount of damages claimed is not admitted. The claim is excessive.

5. It is therefore submitted that the suit fails and must be dismissed with costs.

District Government Pleader, Belgaum.

I, District Government Pleader, Belgaum, do hereby declare that what is stated in paragraphs 1 to 5 above is true according to the information received and believed to be true. This verification is made at on the day of 1947.

District Government Pleader, Belgaum.

MOST URGENT.PLEASE.

15

No.O.S.144/46.
Belgaum, 19th July 1947.

To

The Remembrancer of Legal Affairs,
B o m b a y.

Subject:- Suit No.144 of 1946:
Neelawwa kom Sankappa Patil & others Vs.LAC.Wright,H.C.924587, & another.

Sir,

With reference to the above subject, I have the honour to state that I received written statement on behalf of Central Government with your letter No.3883 dated 18.4.1947. Accordingly, I filed it in court on 17.6.1947 when the suit was ~~also~~ fixed for written statement of defendant No.2. The plaintiff's pleader had already applied that the service of summons on defendant no.1 be made by publishing it in the -- "Times of India", on the ground that the summons could not be served on defendant no.1 though attempts in that connection were made through the Commanding Officer, R.A.F.Sambre where defendant no.1 is said to have ~~xxxxx~~ last served and also through R.A.F.Base -- Personnel Office, Bombay. A summons was , therefore, ordered to be published in the "Times of India" and it was so published therein, in the issue of 6-5-1947. The printed summons was exhibited at Exh.28 on 17.6.1947. The defendant no.1 was called out in court and proceeded exparte, as he remained absent.

2. On 14.6.1947, I had informed the Adm.Comd.Belgaum, that I had filed written statement on behalf of defendant No.2 - the Central Government - only and that I had received no instructions to defend the suit on behalf of defendant no.1, and that I could not take any steps regarding deft.1 until instructions were received from Government in that behalf. I have sent a copy of the same to you on 14.6.47. I have not been able to know anything in that behalf so far.

3. The suit was then fixed for framing issues, which fact was reported by me on 24.6.1947, sending a copy of the same to the Adm.Comd.Belgaum. Now, today, I have requested the court to adjourn the suit for some time, so as to enable me to --- report the matter to you and request you to issue necessary

instructions in the matter. The court has, hence, adjourned the suit for framing of issues, on 20-8-1947

4. I have, therefore, the honour to request you kindly to instruct me as to whether I should appear on behalf of the defendant No.1 also, or proceed with the defence of suit against defendant No.2- Central Govt.- only. It may please be noted that defendant No.1 LAC Wright has returned to the United Kingdom on 4-8-1945. This, I could gather from the papers of the Court of Inquiry Proceedings, sent to me with your No.6667 dated 7.5.1947.

5. I may add that I have received a letter No.96/3-19/A, dated the 31st May 1947, from the Adm.Comd.Belgaum, saying that the LAC Wright is not name, but a title. But the No.H.C.924587 stated in the plaint, if referred, would give the required name.

Your obedient servant,

District Government Pleader.

8811
23-7-47
A

Copy f.w.cs. to the Adm.Comd.Belgaum, for --- information and necessary action, with reference to his No.96/3-19/A, dated the 31st May 1947.

8811.
23-7-47

S. D. 2 JUL 1947

(memo with No/SBr-3/47)

A.

This is an action in tort. The L.G. has undertaken the defence on behalf of the Central Govt. who is the defendant No.2. Wright the defendant No.1 is the real wrongdoer. He is no longer in India and I don't think the G.S.P can represent him. Even if

(2) 44

the D.S.P. were to appear for him
we do not know the grounds on which
the suit can be defended & or
his behalf. We have requested
the army authorities & state
these grounds (see p 7-8 ante)
but there is no reply. In the
absence of clear instructions
and vakalatnama from Wright,
I do not think the D.S.P can
appear for him. For orders.

RV
23/7/47

A | A.L.R A is correct and the D.S.P may be informed accordingly

RC 23/7

RLA 23/7/47.

N9 44

C.S. No. 184 of 1946.

Exh.35.

I S S U E S.

1. Do plaintiff prove that the defendant No.1 caused the death of the deceased Sankappa by a rash and negligent act as alleged in paras 2 and 3 of the plaint?
2. If so, are plaintiffs entitled to any and what damages
3. Is defendant No.2 liable for the rash and negligent act of the defendant No.1 ?
4. What decree should be passed ?

Sd.M.S.Bagali,

20.10.1947. Civ.Judge,S.D.Belgaum.

No. O.S.144 of 1946.

Belgaum, 29-6-1948.

To,

The Remembrancer of Leagal Affairs, Bombay.

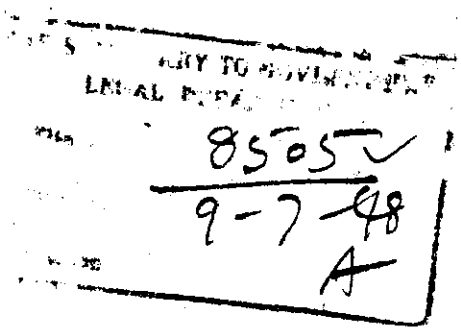
Subject:- Civil suit No.144/1946 (Neelava and 4 others Vs. The Governor General in Council and another.)

S I R,

With reference to the subject noted above I have the honour to state that the suit No. 144/1946 was disposed of by the Court on 25-6-1948. A copy of the order and the bill of costs below it is sent herewith for information.

Yours faithfully,

Dist. Govt. Pleader, Belgaum.



8 3 67
9/7

Sealed with Opp. (S. Bel. 8/47).
I. please see the D.G. P.'s letter
overleaf. The D.G. P. states that
C.S No. 744/66 was decided on 25/6/68
He has sent the order passed by
the Court. (Pl. see p. 3 post).
Await copies of judgment & decree
etc.
9/7 A.S. There will be no development
This is only an order below
plaint. The suit is
dismissed for default of
title.

Re
9/7

R C A
9/7

No. O.S.144 of 1946.

In the Court of the Civil Judge, Sr.Dn., Belgaum. 23

1. Mrs. Neelawwa Sankappa Patil & others ... Plffs.

Vs.

1. Lac Wright H.C. 924587.
2. The Governor General in Council. } Defts.

ORDER BELOWW Plaint.

Suit dismissed under order 9 rule 3 as against Deft.No.1 and order 9 rule 8 as against Deft. No.2. Plaintiff to pay the costs of Deft.No.2 and bear their own.

Dated 25-6-1948.

Sd. M. S. Bagali.

Civil Judge Sr. Dn.,
Belgaum.

24

Below Ex. 1 in R.O.S.No.144/46.

Bill of Cost.

	Plff.	Deft No.2.
Stamp for Plaint.	337-8-0	0-0-0
Stamp for Vakalat.	0=10-0	0-10-0
Stamp for Process.	8-12-0	0-0-0
Stamp for Exhibits.	1-14-0	1-14-0
Rejected cost on applications.	0-0-0	6-4-0
Pleader's fee.	187-0-0	187-0-0
Total.Rs.	535-12-0	195-12-0

Given under my hand and the seal of the Court this 25th of June 1948.

Sd/- S.M.Chingisha.
Clerk.

Sd/- Pleader for Plff :not found.

Pleader for Deft No.2 Sd/- B.B.Jakati.

Sd/- M.S.Bagali.
Civil Judge,S.D.Belgaum.

S Bdl 3/4